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7
 8 **UNITED STATES BANKRUPTCY COURT**
FOR THE DISTRICT OF NEVADA

9 In re:

10 METAL PARTNERS REBAR, LLC,

11 ☐ Affects this Debtor.

Case No.: BK-S-20-12878-ABL (Lead Case)
 Jointly Administered with:
 Chapter 7

- 12
- 13 ☐ Affects Metal Partners Rebar, LLC
- 14 ☐ Affects BGD LV Holding, LLC
- 15 ☐ Affects BRG Holding, LLC
- 16 ☐ Affects BCG Ownco, LLC
- 17 ☒ Affects All Debtors

Jointly administered with:

Case No. BK-S-20-12876-ABL

Case No. BK-S-20-12789-ABL

Case No. BK-S-20-12880-ABL

18 Date: June 7, 2023

Time: 9:30 a.m.

19 **OMNIBUS REPLY TO THE LIMITED OPPOSITION TO THE ADVERSARY**
PROCEDURES MOTION AND JOINDERS FILED BY: INTERMETAL REBAR, L.L.C.
 20 **[ECF NO. 929]; MULINO TRADING GROUP, LLC [ECF NO. 930]; ADR REBAR, LLC**
[ECF NO. 931]; AND CONSOLIDATED CONSTRUCTION PRODUCTS, INC.
 21 **[ECF NO. 933]**

22 Troy Fox, as Chapter 7 Trustee ("Trustee") of the bankruptcy estates of Metal Partners
 23 Rebar, LLC, BGD LV Holding, LLC, BRG Holding, LLC, and BCG Ownco, LLC (collectively,
 24 the "Debtors"), by and through his special counsel, Bankruptcy Recovery Group, LLC, hereby
 25 respectfully submits this omnibus reply ("Omnibus Reply") to: (i) *Intermetal Rebar, L.L.C.'s*
 26 *Limited Opposition to Chapter 7 Trustee Troy Fox's Motion for Order Establishing Procedures*
 27 *Governing Associated Adversary Proceedings Brought Pursuant to 11 U.S.C. §§ 544, 547 and*
 28 *55 filed by Intermetal Rebar, L.L.C. ("Intermetal Rebar") [ECF No. 929]; (ii) Joinder,*

1 *Opposition, and Non-Consent* filed by Mulino Trading Group, LLC [ECF No. 930]; (iii) *ADR*
 2 *Rebar's Joinder in Intermetal Rebar, L.L.C.'s Limited Opposition to Chapter 7 Trustee Troy*
 3 *Fox's Motion for Order Establishing Procedures Governing Associated Adversary Proceedings*
 4 *Brought Pursuant to 11 U.S.C. §§ 544, 547 and 550* [ECF 931]; and (iv) *Consolidated*
 5 *Construction Products, Inc.'s Joinder in Intermetal Rebar, LLC's Limited Opposition to Chapter*
 6 *7 Trustee Troy Fox's Motion for Order Establishing Procedures Governing Associated*
 7 *Adversary Proceedings Brought Pursuant to 11 U.S.C. §§ 544, 547 and 550* [ECF No. 933].
 8 This Omnibus Reply is supported by the following memorandum of points and authorities, the
 9 record in the above-captioned case, judicial notice, which is hereby requested, and any argument
 10 by counsel at the hearing on the *Motion for Order Establishing Procedures Governing*
 11 *Associated Adversary Proceedings Brought Pursuant to 11 U.S.C. §§ 544, 547 and 550* [ECF
 12 No. 917] (the "Procedures Motion").¹

13 MEMORANDUM OF POINTS AND AUTHORITIES

14 The Trustee filed 59 Avoidance Actions asserting Chapter 5 Claims. The Procedures
 15 Motion seeks to implement substantially the same procedures used by bankruptcy courts
 16 throughout the United States, including this Court, to facilitate the resolution of such adversary
 17 proceedings in an expeditious and cost-effective manner.² Of the 59 defendants that would be
 18 subject to the Procedures Motion, only Intermetal Rebar filed a limited objection, Mulino
 19 Trading Group, LLC filed a joinder, and ADR Rebar, LLC and Consolidated Construction
 20 Products, Inc. filed *untimely* boiler-plate joinders.³

21 Intermetal Rebar objects on three limited bases. First, Intermetal Rebar effectively
 22 requests confirmation that Federal Rules of Civil Procedure 12 and 15 will apply to motions to

23 ¹ Undefined, capitalized terms used herein have the meanings ascribed to them in the Procedures Motion.

24 ² See, e.g., *In re WP Steel Venture LLC, et al.*, Case No. 12-11661 (KJC) (Bankr. D. Del.); *In re VeraSun Energy*
 25 *Corporation et al.*, Case No. 08-12606 (BLS) (Bankr. D. Del.); *In re Semcrude, L.P., et al.*, Case No. 08-11525
 26 (BLS) (Bankr. D. Del.); *In re Fleming Companies, Inc.*, Case No. 03-10945 (MFW) (Bankr. D. Del.); *In re*
Quebecor World (USA), Inc., et al., Case No. 08-10152 (JMP) (Bankr. S.D.N.Y.); *In re Tower Automotive, Inc., et*
 27 *al.*, Case No. 05-10578 (ALG) (Bankr. S.D.N.Y.); *Red Rose, Inc., et al.*, Case No. 20-12814-MKN, ECF Nos. 1929
 28 and 1992 (Bankr. D. Nev).

³ It is worth noting that each of the four objecting parties have requested and received extensions of the deadline to
 file an answer or otherwise respond to the complaint.

1 dismiss and motions to amend or supplement pleadings. *See* ECF No. 929, pp. 3-4. While the
 2 Trustee does not agree with Intermetal Rebar's argument, in the interest of resolving this
 3 objection, the Trustee has amended the Proposed Order to state as follows:

4 The Motion is hereby granted in all respects; provided, however, for the
 5 avoidance of doubt, Federal Rules of Civil Procedure 12 and 15 shall
 6 apply and shall not be altered by this Order with respect to motions to
 7 dismiss or to amend or supplement pleadings.

8 The revised Proposed Order and redline are attached hereto as Exhibits 1 and 2.⁴

9 Intermetal Rebar next argues that all mediations should be handled through the Court's
 10 free Judicial Settlement Conference program and that mediation statements should not be
 11 exchanged between the parties. *See* ECF No. 929, pp. 5 to 7. First, Section D(ii) of the
 12 Proposed Order provides that "[a]bsent further order of this Court, the mediators shall be chosen
 13 from those listed on **Exhibit 2** hereto (the "Mediators"), unless otherwise mutually agreed by the
 14 parties." Thus, the Proposed Order provides a mechanism for Intermetal Rebar to have its
 15 mediation conducted by a Judicial Settlement Conference judge.

16 Second, unless Intermetal Rebar's goal is to needlessly delay resolution of the 59
 17 Avoidance Actions, its arguments make no practical sense. While this Court's Judicial
 18 Settlement Conference program is a wonderful resource, it would be impossible to schedule 59
 19 Judicial Settlement Conferences in the next four to six months. And even if some or the majority
 20 of the 59 Avoidance Actions could be scheduled for Judicial Settlement Conferences, it seems
 21 like a misuse of federal judicial resources to consume all of the valuable Settlement Conference
 22 Judges' available time to resolve avoidance actions, many of which have limited disputed legal
 23 issues and less than \$100,000 at issue, thereby depriving all other bankruptcy cases and
 24 adversaries from using the Judicial Settlement Conference program for more than six months.

25 Furthermore, as a practical matter, not a single Avoidance Action could be set for a
 26 Judicial Settlement Conference until after their Scheduling Conferences, all of which are
 27 scheduled between July 27, 2023 and August 8, 2023. Thus, the first possible Judicial

28 ⁴ The revised Proposed Order also incorporates a minor revision requested by Consolidated Construction Products, Inc. confirming the mediation process will begin ninety days after the complaint is filed instead of seventy-five.

1 Settlement Conference could not occur until mid-August, at the very earliest, and that is only if
 2 there are settlement judges available at that time. Conversely, if the Procedures Motion is
 3 granted, the mediation process will begin in June 2023, with multiple settlement conferences
 4 being scheduled at the end of June and throughout July and August. The established result of the
 5 Proposed Procedures is the expedient and cost effective resolution of the Avoidance Actions for
 6 all parties, which benefits both the estates and the defendants.

7 Intermetal Rebar's third objection is that its mediation statement should not be shared
 8 with the Trustee. As a preliminary matter, if Intermetal Rebar had made this request of the
 9 Trustee, the Trustee would have agreed to make an exception for Intermetal Rebar. However,
 10 instead, Intermetal Rebar has chosen to harm the process for all defendants.

11 Section D(vi) of the Proposed Order provides as follows with respect to the mediation
 12 position statements:

13 The Trustee and the applicable Defendant shall exchange position
 14 statements that contain the following: (a) a brief statement of the nature of
 15 the action, (b) a concise summary of the evidence that supports their
 16 theory of the case, (c) a discussion of the strongest points in their case,
 17 both legal and factual, (d) a history of settlement discussions, and (e) a
 18 settlement proposal they believe is fair. The Trustee and the applicable
 19 Defendant shall also provide a copy of such position statement to the
 20 Mediator, which may not (unless agreed in writing by both parties and the
 21 Mediator) exceed ten (10) pages double-spaced five (5) calendar days
 22 prior to the scheduled mediation.

23 The reason the position statements are exchanged between the parties is to allow the
 24 parties, who have generally not engaged in extensive and time consuming discovery, to
 25 succinctly educate the other party and the mediator about the strength of their claims and
 26 defenses and to exchange initial settlement offers in furtherance of facilitating settlement.
 27 Notably, unlike with blind Judicial Settlement Conference statements, the mediation position
 28 statements **do not** require the parties to disclose confidential information such as: (i) the lowest
 settlement amount they would take; or (ii) the weaknesses in their cases. Should a defendant
 desire to share this information with a mediator in advance of a mediation, they are certainly able
 to do so confidentially and nothing in the Proposed Order precludes such confidential disclosures
 to the mediator.

1 Finally, if Intermetal Rebar or the other joining objectors do not want to participate in the
2 mediation process within ninety days after the complaint was filed and would rather engage in
3 traditional, protracted discovery and delay resolution, they are entitled to do so under the
4 Proposed Procedures.

5 Specifically, Section C(i) of the Proposed Order expressly states:

6 If any party to an Avoidance Action requests pre-mediation formal
7 discovery, then:

- 8 (i) Should the non-requesting party consent to pre-mediation formal
9 discovery, the parties shall conduct a Rule 26(f) conference and
10 submit a discovery scheduling order to the Court (each such order,
11 a “Scheduling Order”) that will provide for the completion of fact
12 and expert discovery in advance of mediation.

13 In fact, in its joinder, Mulino Trading Group, LLC has exercised this option. As such, there is no
14 prejudice to any of the 59 Defendants and the Proposed Order as modified herein should be
15 approved.

16 Based on the foregoing, the Trustee requests that the Proposed Order attached hereto as
17 **Exhibit 1** be granted and all remaining objections overruled.

18 DATED: May 31, 2023

19 BANKRUPTCY RECOVERY GROUP, LLC

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